



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Intent to Conduct Scoping and to Prepare an Environmental Impact

Statement for the Proposed Designation of a National Marine Sanctuary within

Papahānaumokuākea Marine National Monument

AGENCY: Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of intent to prepare a draft environmental impact statement and hold public scoping meetings; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), in cooperation with the U.S. Fish and Wildlife Service (USFWS), the State of Hawai‘i, and the Office of Hawaiian Affairs (OHA), is initiating the process to consider designating marine portions of Papahānaumokuākea Marine National Monument as a national marine sanctuary. Per the requirements of the National Environmental Policy Act (NEPA) and National Marine Sanctuaries Act (NMSA), NOAA will prepare a draft environmental impact statement (DEIS) for the sanctuary designation process to evaluate potential environmental effects of this action. NOAA will also coordinate its responsibility under the National Historic Preservation Act with the NEPA process. NOAA is initiating the public scoping process to invite comments on the scope and significance of issues to be addressed in the environmental impact statement that are related to designating this area as a national marine sanctuary. The results of this scoping process will assist NOAA in moving forward with the designation process, including preparation and release of draft designation documents, and formulating alternatives for the DEIS.

DATES: Comments must be received by NOAA on or before January 31, 2022. NOAA will host virtual public scoping meetings and will allow for comments in both English

and Hawaiian (‘Ōlelo Hawai‘i) at the following dates and times:

- Wednesday, December 8, 2021, 6 PM HST
- Saturday, December 11, 2021, 12 PM HST
- Tuesday, December 14, 2021, 6 PM HST
- Thursday, December 16, 2021, 3 PM HST

ADDRESSES: You may submit comments on this notice by any of the following methods:

Federal e-Rulemaking Portal: Go to <https://www.regulations.gov> and enter “NOAA-NOS-2021-0114” in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Mail: Send any hard copy public comments by mail to: PMNM-Sanctuary Designation, NOAA/ONMS, 1845 Wasp Blvd., Bldg 176, Honolulu, HI 96818.

Public Scoping Meetings: Provide oral comments during virtual public scoping meetings, as described under DATES. Webinar registration details and additional information about how to participate in these public scoping meetings is available at <https://sanctuaries.noaa.gov/papahanaumokuakea/>.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (for example: name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT:

Athline Clark, (808) 725-5800, Athline.Clark@noaa.gov, NOAA Superintendent

Papahānaumokuākea Marine National Monument and UNESCO World Heritage Site,
address: 1845 Wasp Blvd., Bldg 176, Honolulu, Hawai‘i 96818

SUPPLEMENTARY INFORMATION:

I. Papahānaumokuākea Marine National Monument

Papahānaumokuākea is considered a sacred area, from which Native Hawaiians believe all life springs, and to which spirits return to after death. The longest recorded traditional Hawaiian chant, the Kumulipo (source of deep darkness), is the history of how all life forms came and evolved from Papahānaumokuākea, beginning with the coral polyp – the building block for all life. This genealogy of Papahānaumokuākea tells the story of Native Hawaiians’ ancestral connection with the gods who created those coral polyps, the Northwestern Hawaiian Islands or Kūpuna (respected elders) Islands, and everything else in the Hawaiian archipelago, including Native Hawaiians. Throughout the expanse of the Monument, there are many wahi pana (places of great cultural significance and practice) where Native Hawaiian cultural practitioners of today reconnect with their ancestors and gods.

Papahānaumokuākea Marine National Monument is one of the largest protected areas in the world. The original Papahānaumokuākea Marine National Monument and the Monument Expansion Area (collectively “Papahānaumokuākea” or “Monument”), located around the Northwestern Hawaiian Islands, were established under the Antiquities Act through, respectively, Presidential Proclamation 8031 of June 15, 2006, as amended by Proclamation 8112 of February 28, 2007; and Proclamation 9478 of August 26, 2016. In 2006, the President established Papahānaumokuākea Marine National Monument to protect and preserve the marine area of the Northwestern Hawaiian Islands and certain lands as necessary for the care and management of the historic and scientific objects therein. The Federal land and interests in land reserved included approximately 139,793 square miles of emergent and submerged lands and

waters of the Northwestern Hawaiian Islands. NOAA and USFWS promulgated implementing regulations for the original Papahānaumokuākea Marine National Monument on August 29, 2006 (71 FR 51134, 50 CFR Part 404). These regulations codify the scope and purpose, boundary, definitions, prohibitions and regulated activities.

In 2016, Proclamation 9478 expanded the Monument into an adjacent area—the Monument Expansion Area—which includes the waters and submerged lands to the extent of the seaward limit of the United States Exclusive Economic Zone (U.S. EEZ) west of 163° West Longitude and covers an additional 442,781 square miles. Proclamation 9478 also directed the Secretary of Commerce to consider initiating the process to designate the Monument Expansion Area and the original Papahānaumokuākea Marine National Monument seaward of the Hawaiian Islands National Wildlife Refuge and Midway Atoll National Wildlife Refuge and Battle of Midway National Memorial as a national marine sanctuary to supplement and complement existing authorities. The area has a long history of being considered for national marine sanctuary designation, beginning with Executive Order 13178 in 2000, followed by Proclamation 9478 in 2016. Recently, the Senate Committee on Appropriations directed NOAA to initiate the process to designate Papahānaumokuākea Marine National Monument as a National Marine Sanctuary.

The Monument is administered jointly by four Co-Trustees – the Department of Commerce, the Department of the Interior, the State of Hawai‘i, and the Office of Hawaiian Affairs. The Monument Co-Trustees currently operate the Monument guided by a 2008 Monument Management Plan for Papahānaumokuākea and the Presidential Proclamations designating the Monument. The Monument Co-Trustees will update the Monument Management Plan at a later date and will provide opportunities for public input for a new plan. Any draft sanctuary management plan would augment the overarching Monument Management Plan.

II. Background on Sanctuary Designation Process

The NMSA authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries areas of the marine environment that are of special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities. Day-to-day management of national marine sanctuaries has been delegated by the Secretary of Commerce to NOAA's Office of National Marine Sanctuaries. The primary objective of the NMSA is to protect the resources of the National Marine Sanctuary System, including biological and cultural resources, such as coral reefs, marine animals, archaeological sites, historic structures and historic shipwrecks.

III. Purpose and Need for National Marine Sanctuary Designation

The purpose of the designation is to fulfill the purposes and policies outlined in Section 301(b) of the NMSA, 16 U.S.C. 1431(b), including to identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance, provide authority for comprehensive and coordinated conservation and management of these marine areas, and to protect the resources of these areas. Additionally, the purpose of the designation is to implement the provisions of Executive Order 13178 and Presidential Proclamation 9478 that direct NOAA to consider initiating the sanctuary designation process.

The need for designation is to:

- develop objectives and actions that ensure lasting protections consistent with the existing Monument proclamations and regulations;
- safeguard natural and cultural values of the marine environment of the Monument;
- strengthen the existing interagency management regulations (50 CFR 404);

- authorize NOAA to assess civil penalties for violations of sanctuary regulations or permits and to enforce provisions of the NMSA;
- prohibit destruction or loss of sanctuary resources and provide natural resource damage assessment authorities for loss of or injury to any sanctuary resource;
- require interagency consultation for any Federal agency action that is likely to destroy, cause the loss of, or injure any sanctuary resource;
- enhance the joint permitting system for activities in the Monument Expansion Area;
- augment existing authorities under the Antiquities Act; Presidential Proclamations 8031, 8112 and 9478; Executive Order 13178; and 50 CFR 404 to provide additional regulatory and non-regulatory tools for management and protection of Monument resources.

IV. Preliminary Description of Proposed Action and Alternatives

NOAA's proposed action is to consider designating the marine portions of the Monument as a national marine sanctuary, following the designation process in section 304 of the NMSA (16 U.S.C. 1434). As part of the sanctuary designation process, NOAA will develop designation materials including a draft sanctuary management plan, proposed sanctuary regulations, and proposed terms of designation. Each national marine sanctuary has management programs developed with public input and crafted to meet the specific issues and resources found in that sanctuary.

The NEPA process will include preparation of a DEIS to consider alternatives and to describe potential effects of the proposed sanctuary designation on the human environment. The DEIS will evaluate a reasonable range of action alternatives that could include different options for management goals or actions, sanctuary regulations, and potential boundaries. The DEIS will also consider a No Action Alternative, wherein NOAA would not designate the proposed sanctuary. Any proposed

sanctuary regulations would be separate from, but supplementary and complementary to, existing Monument regulations and management provisions from the establishing executive order and proclamations.

The results of this public scoping process will assist NOAA in moving forward with the designation process, including preparation and release of draft documents, and formulating alternatives for the DEIS. Reasonable alternatives that are identified during the scoping period will be evaluated in the DEIS.

V. Summary of Expected Impacts of Sanctuary Designation

The DEIS will identify and describe the potential effects of the proposed action, and reasonable alternatives, on the human environment. Potential impacts may include, but are not limited to, impacts on the Monument's:

- marine resources, including habitats, plants, birds, sea turtles, marine mammals, and special status species;
- cultural and historic resources, including Traditional Cultural Properties and archaeological sites; and
- human uses and socioeconomics, including research, recreation, education, cultural practices, and fishing.

Based on a preliminary evaluation of the resources listed above, NOAA expects potential impacts of continued or enhanced long-term protection of the Monument's natural, cultural and historic resources; improved planning and coordination of research, monitoring, and management actions; reducing disturbance of special status species; reducing threats and stressors to Monument resources; and minimal disturbance during research or restoration actions.

VI. Process for Sanctuary Designation and Environmental Review

NOAA will undertake a process for the designation of a national marine sanctuary, as outlined below.

1. Public Scoping Process— Information collection and characterization, including the consideration of public comments received during scoping, coordination under section 304(a)(5) with Western Pacific Regional Fishery Management Council on any necessary draft fishing regulations for the proposed sanctuary;
2. Preparation of Draft Documents— Preparation and release of draft sanctuary designation documents, including: a DEIS, prepared pursuant to NEPA, a draft sanctuary management plan, and a notice of proposed rulemaking to define proposed sanctuary boundaries and regulations. Draft documents would be used to support consultations with Federal, State, or local agencies, the Office of Hawaiian Affairs, Native Hawaiian organizations, and other interested parties, as appropriate;
3. Public Comment— Through public meetings and in writing, allow for public review and comment on the DEIS, draft sanctuary management plan, and notice of proposed rulemaking;
4. Preparation of Final Documents— Preparation and release of a final environmental impact statement (FEIS), final sanctuary management plan, and a final rule and sanctuary regulations, including a response to public comments.
5. The sanctuary designation and regulations would take effect after the end of a review period of forty-five days of a continuous session of Congress. During this same period, should the designation include State waters, the Governor of the State has the opportunity to concurrently review the terms of designation including boundaries within State waters.

NEPA Lead and Cooperating Agency Roles

NOAA will serve as the lead Federal agency for the NEPA process for the proposed action. The USFWS, State of Hawai‘i and OHA shall serve as cooperating agencies in this process, through agreement with the lead agency. NOAA may invite

other Federal, Tribal, or State and local government agencies to become cooperating agencies in the preparation of this EIS. NEPA regulations specify that a cooperating agency means any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) (40 CFR 1508.1(e)).

Schedule for the Decision-Making Process

NOAA expects to make the DEIS and other draft sanctuary designation documents available to the public in approximately January 2023. NOAA expects to make the FEIS for sanctuary designation available to the public in Fall 2023. A Record of Decision and the final sanctuary management plan and final rule will be completed no sooner than 30 days after the FEIS is made available to the public, in accordance with 40 CFR 1506.11.

VII. Anticipated Permits, Authorizations, and Consultations

Federal, State, and local permits, authorizations or consultations may be required for the proposed action, including consultation under the Endangered Species Act, 16 U.S.C. 1531 et seq., Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., National Historic Preservation Act, 54 U.S.C. 300101 et seq., consistency review under the Coastal Zone Management Act, 16 U.S.C. 1451 et seq., and possibly reviews under other laws and regulations determined to be applicable to the proposed action. To the fullest extent possible, NOAA will prepare the DEIS concurrently with and integrated with analyses required by other Federal environmental review requirements, and the DEIS will list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposed action, in accordance with 40 CFR 1502.24.

Consultation Under Section 106 of the National Historic Preservation Act

This notice confirms that NOAA will coordinate its responsibilities under section 106 of the National Historic Preservation Act (NHPA) during the sanctuary designation process and is soliciting public and stakeholder input to meet section 106 compliance requirements. The section 106 consultation process specifically applies to any Federal agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(l)(1), historic properties include: “any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.”

The NHPA requires that Federal decision makers consider historic properties during project planning. Section 106 of the NHPA requires agencies to take into account the effects of such undertakings they carry out, assist, fund, or permit on historic properties. NEPA mandates that Federal agencies assess a proposed Federal action’s environmental impacts, including impacts on historic and cultural resources. As part of section 106 consultation, it is the agency’s responsibility to provide consulting parties a reasonable opportunity to identify their concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate their views on the undertaking's effects on such properties, and participate in the resolution of any adverse effects (if identified).

The following parties may have consultative roles in the section 106 process: State historic preservation officer, Native Hawaiian organizations, the Advisory Council on Historic Preservation, representatives of local government, and additional consulting parties. Certain individuals and organizations may also participate as

consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the action's effects on historic properties. As part of this public scoping process, NOAA seeks public input on potential effects on historic properties in the area of potential effects (the entire Monument area). NOAA will invite consulting party participation via letters of invitation.

VIII. Public Scoping Process

With this notice, NOAA is initiating a public scoping process to gather input from individuals, organizations, Native Hawaiian Organizations, and Federal, State, and local agencies on the proposed sanctuary designation. NOAA intends to use this process to determine the scope and significant issues to be analyzed in depth in the DEIS, with consideration of the scoping factors and responsibilities provided in 40 CFR 1501.9. NOAA specifically request comments on the following topics, including the identification of potential alternatives, information, and analyses relevant to the proposed action:

- the proposed designation of marine waters of the Monument as a national marine sanctuary, including the spatial extent of the proposed sanctuary and boundary alternatives NOAA should consider;
- the location, nature, and value of resources that would be protected by a sanctuary;
- management measures for the sanctuary and any additional regulations that should be added under the NMSA authority to protect Monument resources;
- the potential socioeconomic, cultural, and biological impacts of sanctuary designation;
- information regarding historic properties in the entire Monument area and the potential effects to those historic properties to support National Historic Preservation Act compliance under section 106; and

- other information relevant to the designation and management of a national marine sanctuary.

Comments may be submitted to NOAA by *January 31, 2022* using the methods described above in ADDRESSES. NOAA will host public scoping meetings during the public comment period, as described above under DATES.

Authority: 16 U.S.C. 1431 et seq.; 42 U.S.C. 4321 et seq.; 40 CFR 1500-1508 (NEPA Implementing Regulations); Companion Manual for NOAA Administrative Order 216-6A;

John Armor,

Director, Office of National Marine Sanctuaries,

National Ocean Service, National Oceanic and Atmospheric Administration.

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